

HOUSE BILL No. 2700

By Committee on Agriculture

1-24

AN ACT concerning agriculture; relating to plants and plant products, plant pests and plant dealers; certain agriculture commodities; amending K.S.A. 2-2112, 2-2113, 2-2114, 2-2115, 2-2116, 2-2117, 2-2118, 2-2120, 2-2122, 2-2123, 2-2124, 2-2125, 2-2126, 2-2128 and 2-2129 and repealing the existing sections; also repealing K.S.A. 2-411, 2-412, 2-413, 2-414, 2-415, 2-417, 2-418, 2-422, 2-422a, 2-424, 2-426, 2-427, 2-428, 2-1119 and 2-2121.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2-2112 is hereby amended to read as follows: 2-2112. This act shall be known as the “plant pest and agriculture commodity certification act.” *The authority to regulate plant pests, live plant dealers, plants and plant products and commodity certification in Kansas is vested exclusively with the secretary of agriculture.*

Sec. 2. K.S.A. 2-2113 is hereby amended to read as follows: 2-2113. As used in the plant pest this act, the following terms shall have the following meanings:

(a) “Plant pests” shall include include any stage of development of any insect, nematode, arachnid, or any other invertebrate animal, or any bacteria, fungus, virus, weed or any other parasitic plant or microorganism, which can injure plants or plant products.

(b) “Board” means the state board of agriculture.

~~(c)~~ “Secretary” means the secretary of the state board Kansas department of agriculture, or the authorized representative of the board or its secretary.

~~(d)~~ (c) “Plants and plant products” means trees, shrubs, grasses, vines, forage and cereal plants and all other plants; cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, grains and all other plant products.

~~(e)~~ “Nursery stock” means any wild or cultivated trees, shrubs, grasses, vines, and cuttings, grafts, scions, buds, and other parts of such plants grown or kept for propagation.

~~(f)~~ “Nursery” (d) “Location” means any grounds or premises on or in which nursery stock is live plants are propagated, or grown, or from which nursery stock is live plants are removed for sale, or any grounds or

1 premises on or in which ~~nursery stock~~ *live plants* are being fumigated,
2 treated, packed, stored, or offered for sale.

3 ~~(g) “Nurseryman” means any person who owns, leases, manages, or~~
4 ~~is in charge of a nursery.~~

5 ~~(h) “Dealer” (e) “Live plant dealer” means any person not a grower~~
6 ~~of nursery stock who procures nursery stock for the purpose of sale or~~
7 ~~distribution independent of any control of the nurseryman, unless ex-~~
8 ~~cluded by rules and regulations of the secretary, who:~~

9 (1) *Grows live plants for sale or distribution;*

10 (2) *buys or obtains live plants for the purpose of reselling or reship-*
11 *ping within this state;*

12 (3) *plants, transplants or moves live plants from place to place within*
13 *the state with the intent to plant such live plants for others and receives*
14 *compensation for the live plants, for the planting of such live plants or*
15 *for both live plants and plantings; or*

16 (4) *gives live plants as a premium or for advertising purposes.*

17 ~~(i) “Agent” means any person selling nursery stock under the partial~~
18 ~~or full control of a nurseryman, or a dealer.~~

19 ~~(j) (f) “Person” means a corporation, company, society, association,~~
20 ~~partnership, governmental agency and any individual or combination of~~
21 ~~individuals.~~

22 ~~(g) “Permit” means a document issued or authorized by the sec-~~
23 ~~retary to provide for the movement of regulated articles to restricted~~
24 ~~destinations for limited handling, utilization, or processing.~~

25 ~~(h) “Host” means any plant or plant product upon which a plant~~
26 ~~pest is dependent for completion of any portion of its life cycle.~~

27 ~~(i) “Regulated article” means any host or any article of any char-~~
28 ~~acter as described in a quarantine or regulation carrying or being capable~~
29 ~~of carrying the plant pest against which the quarantine or regulation is~~
30 ~~directed.~~

31 (j) *“Live plant” means any living plant, cultivated or wild, or any*
32 *part thereof that can be planted or propagated unless specifically ex-*
33 *empted by the rules or regulations of the secretary.*

34 (k) *“Quarantine pest” means a pest of potential economic importance*
35 *to the area endangered thereby and not yet present there, or present but*
36 *not widely distributed and being officially controlled.*

37 (l) *“Regulated nonquarantine pest” means a nonquarantine pest*
38 *whose presence in plants for planting affects the intended use of those*
39 *plants with an economically unacceptable impact and which is therefore*
40 *regulated.*

41 (m) *“Official control” means the active enforcement of mandatory*
42 *phytosanitary regulations and the application of mandatory phytosan-*
43 *itary procedures with the objective of eradication or containment of quar-*

1 *antine pests or for the management of regulated nonquarantine pest.*

2 (n) *“Regulated area” means an area into which, within which and/or*
3 *from which plants, plant products and other regulated articles are sub-*
4 *jected to phytosanitary regulations or procedures in order to prevent the*
5 *introduction and/or spread, or both, of quarantine pests or to limit the*
6 *economic impact of regulated nonquarantine pests.*

7 (o) *“Bee” means a honey-producing insect of the genus Apis including*
8 *all life stages of the insect.*

9 (p) *“Beekeeping equipment” means all hives, supers, frames or other*
10 *devices used in the rearing or manipulation of bees or their brood.*

11 (q) *“Bee pest” means any infectious, contagious or communicable dis-*
12 *ease or harmful parasite or insects affecting honey bees or their brood.*

13 (r) *“Viable” means capable of living, growing and developing under*
14 *favorable conditions.*

15 Sec. 3. K.S.A. 2-2114 is hereby amended to read as follows: 2-2114.
16 The secretary, either independently, or in cooperation with counties, cit-
17 ies, other political subdivisions of the state, federal agencies, agencies of
18 other states or private entities may enter into contracts and agreements
19 and may carry out *official control* operations or measures to locate, and
20 to suppress, control, eradicate, prevent, or retard the spread of, any plant
21 pests. ~~The secretary is authorized to take any actions necessary and con-~~
22 ~~venient for the state to become a party to and participate as a member~~
23 ~~of the interstate pest control compact.~~

24 Sec. 4. K.S.A. 2-2115 is hereby amended to read as follows: 2-2115.
25 To effectuate the purposes of this act, the secretary shall have the right
26 to enter and inspect any property in this state, except private ~~residences~~
27 *dwellings*; or, to stop and inspect any means of conveyance moving within
28 this state, upon probable cause to believe it contains or carries any plant
29 pest or other article subject to this act.

30 Sec. 5. K.S.A. 2-2116 is hereby amended to read as follows: 2-2116.
31 Wherever the secretary finds a plant ~~or~~, plant product *or other regulated*
32 *article* that is infested by a plant pest or finds that a plant pest exists on
33 any premises in this state or is in transit in this state, the secretary ~~may~~,
34 upon giving notice to the owner or an agent of the owner in possession
35 thereof, *may* seize, quarantine, treat, or otherwise dispose of such plant
36 pest in such manner as the secretary deems necessary to suppress, control,
37 eradicate, or prevent or retard the spread of ~~said such~~ plant pest, or the
38 secretary may order such owner or agent to so treat or otherwise dispose
39 of the ~~said such~~ plant pest.

40 Sec. 6. K.S.A. 2-2117 is hereby amended to read as follows: 2-2117.
41 The secretary is authorized to quarantine this state or any portion thereof
42 when ~~he or she shall determine~~ *the secretary determines* that such action
43 is necessary to prevent or retard the spread of a plant pest and to quar-

1 antine any other state or portion thereof whenever ~~he or she~~ *the secretary*
2 determines that a plant pest exists therein and that such action is neces-
3 sary to prevent or retard its spread into this state. Before promulgating
4 the determination that a quarantine is necessary, the secretary ~~shall~~, after
5 due notice to interested parties, *shall* hold a public hearing at which any
6 interested party may appear and be heard either in person or by attorney.
7 *Provided*, The secretary may impose a temporary quarantine for a period
8 not to exceed ~~ninety (90)~~ 90 days during which time a public hearing, as
9 provided ~~herein in this section~~, shall be held if it appears that a quarantine
10 for more than the ~~ninety (90) day~~ 90-day period will be necessary to
11 prevent or retard the spread of the plant pest. The secretary may limit
12 the application of the quarantine to the infested portion of the quaran-
13 tined area and appropriate environs, to be known as the regulated area,
14 and ~~may~~, without further hearing, *may* extend the regulated area to in-
15 clude additional portions of the quarantined area. Following the estab-
16 lishment of the quarantine, no person shall move the plant pest against
17 which the quarantine is established or move any regulated article de-
18 scribed in the quarantine, within, from, into or through this state contrary
19 to the quarantine promulgated by the secretary. The quarantine may re-
20 strict the movement of the plant pest and any regulated articles from the
21 quarantined or regulated area in this state into or through other parts of
22 this state or other states and from the quarantined or regulated area in
23 other states into or through this state, ~~and~~. *The secretary shall impose*
24 such inspection, disinfection, certification or permit and other require-
25 ments as the secretary shall deem necessary to effectuate the purposes
26 of this act. *The secretary is authorized to establish regulations defining*
27 *pest freedom standards for live plants, plants and plant products or other*
28 *regulated articles that pose risk of moving plant pests.*

29 Sec. 7. K.S.A. 2-2118 is hereby amended to read as follows: 2-2118.
30 ~~(a) The secretary shall inspect or cause to be inspected all nurseries in~~
31 ~~the state at least once each year. If upon inspection of any nursery it~~
32 ~~appears that such nursery and its premises are apparently free from plant~~
33 ~~pests, the secretary shall issue to the owner or the person in charge of~~
34 ~~such nursery a certificate setting forth the facts of such inspection. Before~~
35 ~~such certificate is issued the nursery person shall pay a certificate fee plus~~
36 ~~an inspection fee assessed on the basis of a dollar amount for each acre~~
37 ~~or fraction thereof of nursery stock inspected, which fees shall be fixed~~
38 ~~by rules and regulations adopted by the secretary, except that the certif-~~
39 ~~icate fee shall not exceed \$30 and the inspection fee shall not exceed an~~
40 ~~amount assessed on the basis of \$5 for each acre or fraction thereof of~~
41 ~~nursery stock inspected. The nursery certificate fee and the rate of as-~~
42 ~~essment for the inspection fee which are in effect on the day preceding~~
43 ~~the effective date of this act shall continue in effect until the secretary~~

1 ~~adopts rules and regulations fixing a different fee therefor under this~~
2 ~~subsection.~~

3 ~~—(b)—Such certificate shall be valid until the first day of September of~~
4 ~~the year of issuance, except where the inspection is made after the first~~
5 ~~day of May the certificate shall be valid until the first day of September~~
6 ~~of the following year, unless sooner revoked.~~

7 ~~—(c)—Any person who is not a nurseryperson but who owns or possesses~~
8 ~~plants or plant products which such person wishes to have inspected or~~
9 ~~who owns or possesses plants or plant products which such person wishes~~
10 ~~to ship into another state or country, may request that the secretary in-~~
11 ~~spect such plant or plant products with reference to the presence of any~~
12 ~~plant pests or with reference to the presence of plant pests likely to pre-~~
13 ~~vent the acceptance of such plants or plant products in such other state~~
14 ~~or country. The secretary may comply with such request as soon as it is~~
15 ~~conveniently practicable and shall issue a certificate setting forth the facts~~
16 ~~of the inspection. The secretary shall charge and collect fees for such~~
17 ~~inspection and certificate which shall be fixed by rules and regulations~~
18 ~~adopted by the secretary so that the fee is the larger of the amount de-~~
19 ~~termined on a rate per hour plus the mileage expenses incurred by the~~
20 ~~inspector, which shall be at the mileage allowance rate prescribed by rules~~
21 ~~and regulations adopted under K.S.A. 75-3203a, and amendments~~
22 ~~thereto, or a dollar amount plus an amount per certificate, except that~~
23 ~~such fees and amounts shall not exceed fees at the rates of \$30 per hour~~
24 ~~plus such mileage expenses incurred by the inspector or \$50 plus \$50 per~~
25 ~~certificate, whichever is the larger amount. Upon request the secretary~~
26 ~~may provide inspection services for certification purposes of regulated~~
27 ~~articles intended for shipment interstate or internationally. Upon payment~~
28 ~~of the appropriate fee as established by rule and regulation and as in-~~
29 ~~spection personnel are available, the inspection shall be conducted and a~~
30 ~~report or certificate setting forth the inspection results shall be issued if~~
31 ~~requested. Inspection fees shall not exceed \$100 per hour. Mileage in-~~
32 ~~curring shall also be paid by the person requesting the inspection at the~~
33 ~~rate established by regulation. If certificate is requested an additional fee~~
34 ~~not to exceed \$100 shall be assessed. The fees for such inspection and~~
35 ~~certificate in effect on the day preceding the effective date of this act~~
36 ~~shall continue in effect until the secretary adopts rules and regulations~~
37 ~~fixing a different fee therefor under this subsection except that on and~~
38 ~~after July 1, 1996, the certificate fee shall be \$5 for certificates issued for~~
39 ~~plant and plant products shipped into another state and \$20 for plants~~
40 ~~and plant products shipped into another country until the secretary adopts~~
41 ~~rules and regulations fixing a different fee therefor under this subsection.~~
42 ~~In any case where any intended receiving state or country requires or~~
43 ~~authorizes the certification of nursery stock, plants or plant products, bees~~

1 *or beekeeping equipment or other regulated articles* to be based on origin,
2 special handling, treatment or any other procedure in addition to or in
3 lieu of actual visual inspection of such ~~nursery stock, plants or plant prod-~~
4 ~~ucts articles~~, the secretary may provide such certification. *The secretary*
5 *may refuse to perform any inspection if the regulated article to be in-*
6 *spected is found to be in such condition that it cannot be adequately*
7 *inspected or the environs in which the regulated article is located present*
8 *a danger to the health and safety of the inspection personnel.*

9 Sec. 8. K.S.A. 2-2120 is hereby amended to read as follows: 2-2120.
10 Every *live plant* dealer ~~shall~~, before selling or offering for sale or deliver-
11 ing any ~~nursery stock~~ *live plants* in this state, *shall* procure from the
12 secretary a ~~nursery~~ *live plant* dealer's license for each location and vehicle
13 from which the *live plant* dealer offers such ~~nursery stock~~ *live plants* for
14 sale. Application for such license shall be made on a form furnished by
15 the secretary, and the fee for each application shall be fixed by rules and
16 regulations adopted by the ~~board~~ *secretary*, except that such fee shall not
17 exceed ~~\$50~~ *\$150*. The application fee in effect on the day preceding the
18 effective date of this act shall continue in effect until the ~~board~~ *secretary*
19 adopts rules and regulations fixing a different application fee under this
20 section. The dealer's license shall expire on ~~December~~ *January* 31, fol-
21 lowing date of issue, *except that all valid certificates of nursery inspection*
22 *and nursery dealer licenses issued by the secretary that are scheduled to*
23 *expire in 2002 shall remain valid until January 31, 2003. The dealer shall*
24 ~~sell only nursery stock which has been inspected and certified~~ *A live plant*
25 *dealer may sell only live plants which are in compliance with all quar-*
26 *antines and regulated nonquarantine pest freedom standards established*
27 *by the secretary, or which has come to the dealer live plants accompanied*
28 *by a valid certificate of inspection of a federal inspector or inspector of*
29 *another state, stating that such stock was inspected and is apparently free*
30 ~~from plant pests~~ *live plants comply with all applicable quarantines and*
31 *regulated nonquarantine pest freedom standards. Except where restricted*
32 *by a quarantine, live plants transplanted on one contiguous property are*
33 *exempt from the provisions of this act.*

34 Sec. 9. K.S.A. 2-2122 is hereby amended to read as follows: 2-2122.
35 If it is found that any ~~nursery certificate or nursery live plant~~ dealer
36 license issued ~~or approved~~ by the secretary is being used in connection
37 with ~~nursery stock which has not been inspected, or which is infested~~
38 ~~with plant pests, or which is being sold and delivered without treatment~~
39 *live plants which do not meet the quarantines and regulated nonquar-*
40 *antine pest freedom standards established by the secretary, or other pre-*
41 *cautionary measures prescribed by the secretary under the provisions of*
42 ~~K.S.A. 2-2119 this act~~ and amendments thereto ~~being carried out by the~~
43 ~~nurseryman~~, or if it is found that any ~~nursery certificate or nursery live~~

1 *plant* dealer's license is being used by a person other than the one to
2 whom it was issued, the secretary may require the owner of the ~~certificate~~
3 ~~or~~ license to appear for a hearing, on a specified date, to be conducted
4 in accordance with the provisions of the Kansas administrative procedure
5 act to show cause why the ~~certificate or~~ license should not be revoked.
6 If, after such hearing, the secretary finds that such ~~certificate or~~ license
7 has been wrongfully used in one or more of the ways specified in this
8 section, or if the owner of such ~~certificate or~~ license fails to appear at
9 such hearing, the secretary may issue an order revoking such ~~certificate~~
10 ~~or~~ license.

11 Sec. 10. K.S.A. 2-2123 is hereby amended to read as follows: 2-2123.
12 It shall be unlawful to deliver, transport or ship into or within this state
13 ~~nursery stock which has not been inspected in accordance~~ *live plants or*
14 *other regulated articles which are not in compliance* with the provisions
15 of this act. Any such ~~nursery stock~~ *live plants* intended for resale and any
16 such ~~nursery stock~~ *live plants* transported by public carrier shall have
17 attached to each quantity or package a tag or label on which shall appear
18 a copy of a valid ~~certificate of inspection~~ *document* issued by the proper
19 official of the state, territory, district or country from which it was
20 shipped, sent, or brought showing that such ~~nursery stock was found free~~
21 ~~from plant pests. Nursery stock live plants are in compliance with Kansas~~
22 *quarantines and regulated nonquarantine pest freedom standards. Live*
23 *plants brought into the state under an inspection certificate a document,*
24 ~~as above required by this section,~~ may be sold and moved under ~~the~~
25 ~~certificate or license of a Kansas nurseryman or Kansas nursery dealer,~~
26 ~~but a valid Kansas live plant dealer license, and~~ this shall not preclude
27 inspection *by the secretary* at any time within the state. *Electronic or mail*
28 *order sales of live plants are subject to the provisions of this act. All*
29 *regulated articles shipped or moved into Kansas shall be accompanied by*
30 *valid documentation issued by the proper official of the state, territory,*
31 *district or county from which it was shipped or moved showing that the*
32 *regulated article is in compliance with Kansas quarantines or pest freedom*
33 *standards, or both, established for such article.*

34 Sec. 11. K.S.A. 2-2124 is hereby amended to read as follows: 2-2124.
35 It shall be a violation of this act for any person:

36 (a) To sell, barter, offer for sale, or move, transport, deliver, ship or
37 offer for shipment into or within this state any plant pests in any living
38 stage without first obtaining approval for such shipment from the
39 secretary;

40 (b) to hinder or prevent the secretary from carrying out his or her
41 duties under this act;

42 (c) to fail to carry out the treatment or destruction of any plant pest
43 or regulated article in accordance with official notification from the

1 secretary;

2 (d) to sell, transport, *deliver, distribute, or offer or expose* for sale
3 ~~nursery stock which has not been inspected and which is not covered by~~
4 ~~a valid certificate of inspection~~ *live plants which are not in compliance*
5 *with the provisions of this act;*

6 (e) to use an invalid or revoked certificate of inspection, or ~~dealers~~
7 *live plant dealer* license, in the sale or distribution of ~~nursery stock live~~
8 *plants;*

9 (f) ~~to sell, offer or expose for sale, or distribute nursery stock which~~
10 ~~does not have attached thereto a shipping tag or label bearing a copy of~~
11 ~~the certificate of inspection as is required by K.S.A. 2-2123;~~

12 ~~—(g) to sell, offer or expose for sale or deliver any nursery stock without~~
13 ~~having a current nursery certificate or license as a nursery dealer;~~

14 ~~—(h) to fail to comply with any of the provisions of this act, or the rules~~
15 ~~and regulations promulgated hereunder; and~~

16 ~~(i) (g)~~ (g) to knowingly move any regulated article into this state from a
17 quarantined area of any other state when such article has not been treated
18 or handled as provided by the requirements of said quarantine at the
19 point of origin of such article.

20 Sec. 12. K.S.A. 2-2125 is hereby amended to read as follows: 2-2125.

21 (a) Any person violating any of the provisions of this act shall be deemed
22 guilty of a misdemeanor and upon conviction shall be punished by a fine
23 of not less than ~~twenty-five dollars (\$25)~~ \$25 nor more than ~~five hundred~~
24 ~~dollars (\$500)~~ \$500.

25 (b) *The secretary may assess a civil penalty against any person who*
26 *violates or fails to comply with the requirements of this act of not less*
27 *than \$100 nor more than \$1,000 per offense. In the case of a continuing*
28 *offense, each day the violation continues may be deemed a separate vio-*
29 *lation. Such civil penalty may be assessed in addition to any other penalty*
30 *provided by law. Such assessment shall be made in accordance with the*
31 *Kansas administrative procedure act.*

32 Sec. 13. K.S.A. 2-2126 is hereby amended to read as follows: 2-2126.
33 The secretary shall promulgate, amend and repeal such rules and regu-
34 lations as, in the discretion of the secretary, are necessary for the efficient
35 execution of the provisions of ~~the plant pest~~ *this act.*

36 Sec. 14. K.S.A. 2-2128 is hereby amended to read as follows: 2-2128.
37 The secretary shall remit all moneys received by or for the secretary under
38 article 21 of chapter 2 of Kansas Statutes Annotated, and amendments
39 thereto, to the state treasurer in accordance with the provisions of K.S.A.
40 75-4215, and amendments thereto. Upon receipt of each such remittance,
41 the state treasurer shall deposit the entire amount in the state treasury
42 to the credit of the entomology fee fund. All expenditures from such fund
43 shall be made in accordance with appropriation acts upon warrants of the

1 director of accounts and reports issued pursuant to vouchers approved
2 by the secretary of the state board of agriculture or by a person or persons
3 designated by the secretary.

4 Sec. 15. K.S.A. 2-2129 is hereby amended to read as follows: 2-2129.

5 (a) There is hereby created a plant pest emergency response fund in the
6 state treasury. Such fund shall be funded by a fee assessed in addition to
7 the fees assessed a ~~nursery dealer or nursery certificate holder~~ *live plant*
8 *dealer* under article 21 of chapter 2 of the Kansas Statutes Annotated.
9 The additional fee shall be fixed by rule and regulation promulgated by
10 the secretary of agriculture, except that such additional fee shall not ex-
11 ceed \$5 annually on each ~~nursery dealer and nursery certificate holder~~
12 *live plant dealer license*. The secretary is authorized and empowered to
13 collect the fees provided in this section. When the total amount of fees
14 deposited in the fund is equal to or exceeds \$15,000, the secretary shall
15 not collect any such fees as provided in this section. When expenditures
16 made from the fund result in the total amount of the fees deposited in
17 the fund to be less than \$15,000, the secretary may resume the assessment
18 and collection of such fees as provided in this section.

19 (b) The secretary is authorized and empowered to make expenditures
20 from the plant pest emergency response fund and that in the discretion
21 of the secretary mitigate pests that have been identified by the secretary
22 as high risk pests having the potential to damage agriculture, horticulture
23 or the environment. Such expenditures may include the costs of enforce-
24 ment to protect against high risk pests identified by the secretary. All
25 expenditures from such fund shall be made in accordance with appro-
26 priation acts upon warrants of the director of accounts and reports issued
27 pursuant to vouchers approved by the secretary or by a designee of the
28 secretary.

29 (c) The plant pest emergency response fund shall be a fund separate
30 and distinct from the entomology fee fund referred to in K.S.A. 2-2128,
31 and amendments thereto.

32 (d) The provisions of this section shall be part of and supplemental
33 to ~~the plant pest~~ *this act*.

34 New Sec. 16. All live plants offered for sale or distribution must be
35 in a viable condition and must be stored and displayed under conditions
36 that will maintain such viability.

37 Sec. 17. K.S.A. 2-411, 2-412, 2-413, 2-414, 2-415, 2-417, 2-418, 2-
38 422, 2-422a, 2-424, 2-426, 2-427, 2-428, 2-2112, 2-2113, 2-2114, 2-2115,
39 2-2116, 2-2117, 2-2118, 2-2119, 2-2120, 2-2121, 2-2122, 2-2123, 2-2124,
40 2-2125, 2-2126, 2-2128 and 2-2129 are hereby repealed.

41 Sec. 18. This act shall take effect and be in force from and after its
42 publication in the statute book.